

S E C R E T SECTION 01 OF 04 BAGHDAD 004936

SIPDIS

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SUBJECT: SECOND AND THIRD DAYS OF AD DUJAYL TRIAL

Classified By: DCM David M. Satterfield for reasons 1.4 (B) and (D).

¶11. (U) SUMMARY: The second day of the Ad Dujayl trial commenced on November 28, 2005. Despite fears that the defense lawyers would refuse to appear, most attended. The day was devoted largely to procedural issues although the Court did review a short video presentation and read the witness statement of Waddah al-Sheik, a deceased witness who testified in a special session at the Abu Ghraib hospital on October 23. The third day of trial began on December 5. The defense attorneys initially walked out of the proceedings after Judge Rizgar refused to hear oral arguments on the Iraqi High Tribunal's (IHT's) legitimacy and defense counsel security. After a compromise was brokered between the IHT and the defense attorneys, trial resumed. Two witnesses testified about the reprisals that the former regime inflicted upon them and the city of Ad Dujayl. Although the trial is proceeding, there are significant political pressures on Judge Rizgar to maintain tighter control over the courtroom and Saddam Hussein. Indeed, persons in the Iraqi Government have called for Judge Rizgar to be removed from his position. In response, RCLC discussed the matter with President Jalal Talabani. Talabani responded directly to Judge Rizgar and told him that he would provide Judge Rizgar with any necessary support. (Days 4 and 5 of trial in septel.) END SUMMARY.

Morning Trial Proceedings - Day 2 - November 28

¶12. (U) On November 28, the IHT commenced the second full day of trial in the Ad Dujayl matter. The day began with Judge Rizgar attempting to establish that each defendant had legal representation. He then offered condolences regarding the "martyrs" on the defense team who were killed on October 20, 2005 (Sadoon Al-Janabi, an attorney for Awad Al Bander) and November 8, 2005 (Adel Al-Zubeidi-an attorney for Taha Ramadan and Barzan Al-Tikriti).

¶13. (U) At this point, Saddam Hussein's principal Iraqi attorney of record, Kaleel al-Dolami, approached the Court to request that Ramsey Clark, Najib al-Nuaimi, and Issam al-Ghazzawi be allowed to assist in the defense of Saddam Hussein. Before Saddam Hussein signed the relevant papers, he complained that he did not have a pen and that he had to walk four flights of stairs. Judge Rizgar stated that he would alert authorities. Saddam rebuked Judge Rizgar and stated: "I don't want you to alert them. I want you to order them. They are in our land. You are an Iraqi, a sovereign person in charge of this court. They are foreigners, invaders, occupiers." Ultimately Judge Rizgar ordered Saddam to sign the papers, and Saddam complied.

¶14. (U) After the paperwork was submitted, Judge Rizgar presented a four-minute television presentation that showed Saddam Hussein in the immediate aftermath of the Ad Dujayl incident. In the video, Saddam is speaking to local residents. He then orders his officers to "separate them and interrogate them." Judge Rizgar played the video three times before turning it off.

¶15. (U) When the video ended, Judge Rizgar read the witness statement of Waddah al-Sheik. Waddah al-Sheik's testimony was recorded via video camera on October 23, 2005 from a hospital in Baghdad. Mr. al-Sheik was suffering from terminal cancer and died shortly after the IHT recorded his testimony. He was the director of a Mukhabarat intelligence unit responsible for investigating the events of Ad Dujayl. His testimony implicated Saddam Hussein, Taha Ramadan, and Barzan al-Tikriti.

¶16. (U) After the testimony was read, several defense attorneys (including Kaleel al-Dolami, Ramsey Clark, and Najib al-Nuaimi) sought to address the issues of defense counsel security, the IHT's legitimacy, and the IHT's jurisdiction. Judge Rizgar refused to entertain these matters and directed the defense attorneys to submit written papers on each issue so that he could consider them.

Afternoon Trial Proceedings - Day 2

¶17. (U) When trial proceedings resumed in the afternoon, Judge Rizgar informed those defendants without counsel that they

could meet with replacement counsel. Taha Ramadan requested additional time so that a defense attorney based in Beirut could travel to Iraq and represent him. Chief Prosecutor Ja'far requested that the Court immediately hear testimony from the victims of Ad Dujayl who were present in Court that day. Judge Rizgar refused. He stated that the Court would adjourn until December 5 so that each defendant could find adequate representation and/or meet with their attorneys. The defense attorneys objected. They stated that the issues before the Court were complex, that they were new to the case, and that they needed at least 45 days to prepare. After a brief recess, the Court reconvened and told the defendants that the trial would resume on December 5.

Behind the Scenes of Trial Day 2

¶18. (S) At the beginning of trial day 2, RCLO attorneys and Howard Morrison (the IHT Legal Adviser from the UK) met with the Trial Chamber judges. The Trial Chamber agreed to issue a warning to the defense attorneys who deliberately refused to appear, ordering the missing attorneys to come before the IHT within 48 hours. Should they fail to appear, the IHT agreed to replace them with public defense counsel from the IHT Defense Office and adjourn until the newly appointed defense counsel became conversant in the case. The Trial Chamber also agreed to refrain from offering any testimony or evidence until such time as competent counsel represented each defendant.

¶19. (S) When trial began, however, Judge Rizgar did not follow these recommendations. Indeed, he played the four-minute video of Saddam Hussein in Ad-Dujayl and read the witness testimony of Wadah al-Sheik even though attorneys for Barzan al-Tikriti and Taha Ramadan were not present. At the lunch recess, Judge Rizgar indicated that (despite vigorous objections from the RCLO and Howard Morrison) he intended to call witnesses. After discussion of the matter, Judge Rizgar agreed to avoid calling witnesses to testify that afternoon.

¶10. (S) After Judge Rizgar announced the December 5, 2005 date to reconvene the court, he recessed and met again with RCLO attorneys and Howard Morrison. Both the RCLO and Mr. Morrison recommended that Judge Rizgar recant the December 5 date and issue a 48 hour warning to all missing defense counsel. If they appeared, the trial could resume and the Court could take testimony. If the missing attorneys failed to appear, the Court would appoint new counsel and adjourn for 45 days so that the newly appointed counsel could study the case. Judge Rizgar did not accept this recommendation. He stated that, because the December 5 date was announced in open Court, he could not recant it. In response, RCLO attorneys recommended that he keep the December 5 date but hold only a status conference between the judges, prosecutors, and defense counsel on that date. Such a conference would permit the Court to resolve the defense counsel issue without the pressure of the defendants and witnesses being present. Judge Rizgar refused to do this. He informed all present that the Court would reconvene on December 5 and that he intended to call witnesses on that date.

¶11. (S) Forgetting repeated warnings from the RCLO, Judge Rizgar revealed in open court the names of each member of the IHT's Defense Office and an RCLO FSN, Yaghda Mahdi. Prior to November 28, 2005, the IHT hired eight public defenders to represent the various defendants in the event that their privately retained defense attorneys did not appear. Upon release of their names to the public, three IHT defense attorneys resigned, leaving only five to staff the IHT Defense Office. As for Mr. Mahdi, the RCLO has taken steps to move him into secure housing. (COMMENT: Despite these mistakes, RCLO believes Judge Rizgar to be a fair and judicious leader of Trial Chamber 1 but recognizes that he may be too lenient at times in terms of his control over the proceedings. Unfortunately, he has come under tremendous political and popular pressure for this. END COMMENT.)

¶12. (S) On November 2, 2005, Iraq's National Security Adviser, Mowafak Rubaie, said he had come to the trial for "healing." He asserted that Judge Rizgar was treating Saddam Hussein with too much respect (i.e., by calling Saddam Hussein "Mr. Hussein" instead of referring to him as "the defendant"). Abdul Aziz al-Hakim, the political leader of the Supreme Council for Islamic Revolution in Iraq, and others expressed similar disdain for Judge Rizgar's polite demeanor. Judge Rizgar informed RCLO attorneys on December 1 that many individuals in the Iraqi Government are disappointed in him for failing to control the proceedings and press forward despite the problems with defense counsel. He complained that Iraqi government officials are trying to influence his judgment while also trying to remove him from the Court. Judge Rizgar stated that he is a man of principle and will not tolerate such behavior. He stated further that, if this interference continues, he will resign his position

so that his integrity does not become compromised.

Morning Trial Proceedings - Day 3 - December 5

¶13. (U) Day 3 commenced with IHT Judge Sae'eed Mussa agreeing to appear on camera. Judge Rizgar confirmed that competent counsel represented each defendant. Immediately thereafter, Ramsey Clark and Najib al-Nuaimi sought to introduce motion papers on two issues: (1) court security and (2) the Tribunal's legitimacy. Judge Rizgar refused to permit the attorneys to discuss these matters. He stated that only the principal Iraqi attorney of record, Kaleel al-Dolami, could address the court and submit papers. Judge Rizgar also stated that the Tribunal was legitimate and that, if the defendants disagreed, they could appeal. Matters escalated quickly with Dr. Najib arguing that the Tribunal was afraid to hear the defense attorneys' statements. Ramsey Clark informed Judge Rizgar that, if he could not submit his motion papers, he would walk out of the proceedings. Judge Rizgar told Clark that he could not address the Tribunal in English and that he would not accept his motion papers. As a result, eight of twelve defense attorneys walked out of the room. Only Hashem Fityan (the privately retained attorney for the Roweds) and three IHT Defense Office Attorneys remained in the room.

¶14. (U) Following the walk-out, Judge Rizgar threatened to appoint immediately IHT defense attorneys for each defendant. The defendants argued loudly that such action violated their rights. Both Saddam Hussein and Barzan Al-Tikriti yelled at Judge Rizgar until Judge Rizgar adjourned so that he could contemplate how best to move forward.

¶15. (S) During the 90 minute recess, Howard Morrison sat with the IHT Trial Chamber and told them that they had to compromise with the defense attorneys. Mr. Morrison went so far as to tell the Trial Chamber that, if they did not follow his advice, he would cease to serve as the international law adviser to the IHT. While Mr. Morrison was consulting with the IHT, Hashem Fityan approached RCL0, seeking to speak with Judge Rizgar in order to broker a compromise. Judge Rizgar agreed to this, and a compromise between the Trial Chamber and Mr. Fityan was reached. The defense attorneys agreed to return to the courtroom so long as Mr. Ramsey Clark could receive five minutes of court time to address the issue of defense counsel security. In addition, the Tribunal granted Dr. Najib fifteen minutes of court time to address the issue of court legitimacy.

Afternoon Trial Proceedings - Day 3

¶16. (U) Proceedings resumed with Dr. Clark arguing that the Tribunal needed to do more to provide security for defense counsel. Dr. Najib then traced the history of the Tribunal's establishment and argued that, because it was formed during the Coalition's occupation of Iraq, it was illegitimate.

¶17. (U) Then, the first complainant (Ahmad Hassan Muhammad) testified. Mr. Muhammad testified openly and on camera. He described in detail the deaths of family members following the events at Ad Dujayl and the torture which was inflicted upon him during his imprisonment. He described how Ba'ath Party officials hurled a young boy out a window and said he had seen a meat grinder with human hair and blood on it. Mr. Muhammad also provided the names, identities, and birthdates of friends and relatives who were arrested and disappeared. Although Mr. Muhammad did not link Saddam Hussein directly to the events in Ad Dujayl he did state that he witnessed Barzan Al-Tikriti in the area.

¶18. (U) The second witness to testify, Jawad Abdul Azziz Jawad, described how helicopters attacked the city of Ad Dujayl following the failed assassination attempt against Saddam. He also stated that bulldozers were brought into the area to destroy farmer's fields. Mr. Jawad testified further that Iraqi security forces killed three of his brothers, one before the assassination attempt, and two afterward.

¶19. (U) At various points of Mr. Muhammad's and Mr. Jawad's testimony, Saddam Hussein and Barzan Al-Tikriti interjected. Barzan Al-Tikriti admitted at one point that he was the head of Iraq's Intelligence services at the time the reprisals were inflicted upon Ad Dujayl. Saddam Hussein also conceded at several points that command responsibility flowed through him. These concessions are important as the IHT must show that Saddam Hussein and Barzan Al-Tikriti knew or should have known about the atrocities in order for a conviction for crimes against humanity.

¶20. (S) At one point during the proceedings, Amer Alkuzai, Iraq's Deputy Minister of Health began to make threatening gestures from the public gallery to Kaleel al-Dolami. In particular, Mr. Alkuzai gestured as if to slit his throat

with his finger to indicate that Mr. al-Dolami would suffer a similar fate. Kaleel al-Dolami immediately objected and demanded that Judge Rizgar remove Mr. Alkuzai from the Court.

Judge Rizgar agreed, ordered Mr. Alkuzai removed, and demanded that a full investigation into the matter occur. When this occurred, Mr. Alkuzai began spitting at the window of the public gallery. IHT security staff and United States Marshals removed Mr. Alkuzai from the building.

¶21. (U) At the end of Mr. Jawad's testimony, the court adjourned to the following day.

¶22. (S) COMMENT: IHT International Adviser Howard Morrison and RCLO attorney advisers played a significant role during the lead up to testimony as well as during the testimony itself, advising the court on legal and practical issues. The court holds Mr. Morrison in high regard and defers to his opinion on matters of law. However, the court does not yet defer to him on matters of courtroom management, although significant progress has been made in this regard. END COMMENT.

KHALILZAD